

## Civil War Book Review

---

Summer 2013

Article 19

---

### Families in Crisis in the Old South: Divorce, Slavery, and the Law

Rashauna Johnson

Follow this and additional works at: <https://digitalcommons.lsu.edu/cwbr>

---

#### Recommended Citation

Johnson, Rashauna (2013) "Families in Crisis in the Old South: Divorce, Slavery, and the Law," *Civil War Book Review*: Vol. 15 : Iss. 3 .

DOI: 10.31390/cwbr.15.3.20

Available at: <https://digitalcommons.lsu.edu/cwbr/vol15/iss3/19>

## Review

Johnson, Rashauna

Summer 2013

**Schweninger, Loren** *Families in Crisis in the Old South: Divorce, Slavery, and the Law*. University of North Carolina Press, \$49.95 ISBN 978-0-8078-3569-2

The Other Peculiar Institution: Marriage, Divorce, and the Slaveholding South

Households are worlds unto themselves and windows into the world. Consequently, scholars are increasingly interested in households and the insight they offer into the workings of slavery, nation, and empire. Historians of gender and sexuality, for example, have long insisted on centrality of the hierarchical household—white patriarch, obedient white wife, and docile black slaves—to the white supremacist ideologies of the Old South. But individuals from all backgrounds routinely contested the hierarchies of the slaveholding regime. Resistance on the part of the enslaved, for example, routinely threatened the slaveholding household and the society to which it belonged. But what happened when the major conflict in the slaveholding household was not between masters and slaves, but between the master and mistress? What personal, social, and economic factors prompted slave masters and mistresses to risk public shame and legal scrutiny to petition for the dissolution of marriage? How did the institution of divorce change over time and space? And how did the human property bound within these households navigate the opportunities and risks of such divorces?

Loren Schweninger, the Elizabeth Rosenthal Excellence Professor of History at the University of North Carolina-Greensboro, takes up these and other questions in his most recent monograph, *Families in Crisis in the Old South: Divorce, Slavery, & The Law*. Schweninger's publications are many, but he is known for his influential volumes, *The Southern Debate over Slavery*, which are collections of petitions presented before Southern courts and legislatures, as well as significant collaborations with the late John Hope Franklin. In this monograph, Schweninger extends his interest in petitions, this time using a

“small but representative” collection of “divorce, separation, and alimony cases” taken from each of the fifteen slave states and Washington, D.C. between 1800 and 1860. Divorce proceedings required petitioners to submit and verify allegations of domestic disorder, so, Schweninger argues, these records provide a singular vantage point into the dysfunction and violence that undergirded all social relations in the Old South.

What Schweninger finds is that the institution of divorce and the U.S. nation expanded in tandem during the early republican period. The jurisdiction for divorce shifted from legislatures to the judiciary even as the nation itself expanded through the creation of new states along the southwestern frontier. Thus newer states were often at the cutting edge of divorce, and the petitions in those states reveal the unsavoriness of married life on the slaveholding frontier. The peculiar institution permeated every aspect of divorce, Schweninger argues. A society in which access to the bodies of enslaved women was one of the privileges of white manhood, for example, required a capacious definition of infidelity in divorce proceedings. Indeed, Schweninger finds that in these patriarchal societies white men were most likely to cite interracial infidelity by their wives as grounds for divorce than the converse. Wives, whose marital status often rendered them more vulnerable on matters of property than their single counterparts, were subject to husbands who suffered addiction, mental illness, and poor judgment. As a result, state courts across the South gradually constructed norms that offered wives some means to protect their property, which included their slaves.

The achievements of this work are many. *Families in Crisis in the Old South* mines rich sources to illuminate everyday experiences of marriage in a slaveholding regime. Petitions in which a wife complains of having been whipped by her husband in the same manner as slaves, for example, remind us that violence did not move along a strict white-to-black vector, but instead permeated all aspects of society. Those interested in enslaved daily life will especially appreciate the final chapter in which Schweninger considers the ways bondspersons navigated the marital tensions between masters and mistresses. Divorce sometimes meant the dissolution of slave communities, but it also presented an opportunity to carve breathing amid bondage.

Some aspects of the text, however, may prove controversial, which the author anticipates. Most notably, he uses statistical evidence to write social history, an approach that became quite contentious in the aftermath of Fogel and

Engerman's *Time on the Cross*. As with all sources and methods, there are benefits and limitations to this approach. One major benefit is that Schweninger is able to cover a vast scope in a concise manner. He includes cases from Maryland and Virginia to Tennessee and Louisiana, white persons and a handful of free people of color. On the other hand, one critique of statistical approaches is that they sometimes leave too little intellectual space for the contextual knowledge just beyond the data set, in this case the four corners of the divorce petition. Schweninger draws on the larger literature to counter these and other challenges of statistical methods.

Overall, *Families in Crisis in the Old South* offers much to those interested in law and society, gender and marriage, and race and slavery. The monograph will prove useful to scholars even as it will undoubtedly find a home on undergraduate and graduate syllabi. Ultimately, Schweninger again presents a model of careful scholarship and clear prose that make this work an engaging and enlightening read.

*Rashauna Johnson is an assistant professor of history at Dartmouth College.*